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9 Attorneys for Defendant
10 METROPOLITAN LIFE INSURANCE COMPANY

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 VALLEY HEIGHTS, INC., a California
15 corporation,

16 Plaintiff,

17 v.

18 METROPOLITAN LIFE INSURANCE
19 COMPANY, and DOES 1 through 20,
20 inclusive,

21 Defendant.

CASE NO. C 08-02388 HRL

**NOTICE OF NOTICE OF FILING NOTICE
OF REMOVAL**

22 PLEASE TAKE NOTICE that defendant Metropolitan Life Insurance Company
23 (“MetLife”) has, on May 9, 2008, filed in the Superior Court of California, County of Santa Cruz,
24 a Notice of Filing of Notice of Removal in the above-entitled action, a copy of which is
25 attached hereto.

26 DATED: May 13, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

27 By: /s/ Rebecca A. Hull
28 Rebecca A. Hull
Nicole O. Snyder
Attorneys for Defendant
METROPOLITAN LIFE INSURANCE
COMPANY

1 SEDGWICK, DETERT, MORAN & ARNOLD LLP
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9 Attorneys for Defendant
10 METROPOLITAN LIFE INSURANCE COMPANY

FILED
MAY - 9 2008
ALEX CALVO, CLERK
BY DEBORAH ROJAS
DEPUTY, SANTA CRUZ COUNTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

VALLEY HEIGHTS, INC., a California
corporation,

Plaintiff,

v.

METROPOLITAN LIFE INSURANCE
COMPANY, and DOES 1 through 20,
inclusive,

Defendant.

CASE NO. CV159827

NOTICE TO STATE COURT AND
ADVERSE PARTY OF REMOVAL OF
ACTION TO FEDERAL COURT

BY FAX

TO PLAINTIFF AND TO THE CLERK OF THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA, COUNTY OF SANTA CRUZ:

PLEASE TAKE NOTICE that defendant Metropolitan Life Insurance Company
("MetLife") has filed a Notice of Removal of the above-captioned action to federal court, in the
office of the clerk of the United States District Court for the Northern District of California, San
Jose Division, on grounds of federal question jurisdiction. A true and correct copy of said Notice
of Removal is attached hereto and served herewith, exhibits excluded.

PLEASE TAKE FURTHER NOTICE that all further proceedings and hearings in this
matter shall take place only in the United States District Court for the Northern District of

SEDGWICK
DETERT, MORAN & ARNOLD LLP

SF/1508636v1


-1-

NOTICE TO STATE COURT

1 California, San Jose Division, before such judge as shall be assigned by that Court.

2
3 DATED: May 9, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

4
5 By: 
6 Rebecca A. Hull
7 Nicole O. Snyder
8 Attorneys for Defendant
9 METROPOLITAN LIFE INSURANCE
10 COMPANY

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Sedgwick, Detert, Moran & Arnold LLP, One Market Plaza, Steuart Tower, 8th Floor, San Francisco, California 94105. On May 9 2008, I served the within document(s):

NOTICE TO STATE COURT AND ADVERSE PARTY OF REMOVAL OF ACTION TO FEDERAL COURT

- ☐ FACSIMILE - by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.
- ☒ MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- ☐ PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via Federal Express.

Michael J. Cheng
Pahl & McCay
225 West Santa Clara Street, Suite 1500
San Jose, CA 95113
408-286-5100 (tel
408-286-5722 (fax)

Attorneys For Plaintiff

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 9 2008, at San Francisco, California.


Cristi L. Hursh

EXHIBIT A

CIVIL COVER SHEET

JS 44 (Rev. 11/04)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Valley Heights, Inc.

DEFENDANTS

Metropolitan Life Insurance Company

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
OF LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael J. Cheng
Pahl & McCay
225 West Santa Clara Street, Suite 1500
San Jose, CA 95113
408-286-5100

Attorneys (If Known)

Rebecca A. Hull (99802)/Nicole O. Snyder (250636)
Sedgwick, Detert, Moran & Arnold LLP
One Market Plaza, Steuart Tower, 8th
San Francisco, CA 94105
415-781-7900

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §§ 1331, 1441(a), 1441(b) and 1441(c)

Brief description of cause:

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

☐ CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

May 08, 2008

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

NDC-JS44

1 SEDGWICK, DETERT, MORAN & ARNOLD LLP
2 REBECCA A. HULL Bar No. 99802
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4 One Market Plaza
5 Steuart Tower, 8th Floor
6 San Francisco, California 94105
7 Telephone: (415) 781-7900
8 Facsimile: (415) 781-2635

9 Attorneys for Defendant
10 METROPOLITAN LIFE INSURANCE COMPANY

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13
14 SAN JOSE DIVISION

15 VALLEY HEIGHTS, INC., a California
16 corporation,

17 Plaintiff,

18 v.

19 METROPOLITAN LIFE INSURANCE
20 COMPANY, and DOES 1 through 20,
21 inclusive,

22 Defendant.

23 CASE NO.

24 NOTICE OF REMOVAL UNDER 28 U.S.C.
25 §§ 1331, 1441(a), 1441(b) and 1441(c)

26 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

27 PLEASE TAKE NOTICE that defendant Metropolitan Life Insurance Company
28 ("MetLife"), by and through its counsel, hereby removes the above-entitled action, which was
filed by plaintiff Valley Heights, Inc., a California corporation, in the Superior Court of the State
of California, in and for the County of Santa Cruz, Case No. CV159827 ("Complaint"), to this
Court pursuant to 28 U.S.C. sections 1331, 1441(a), 1441(b) and 1441(c), on the following
grounds:

STATUTORY BASIS FOR REMOVAL

1. 28 U.S.C. section 1331 provides that "district courts shall have original
jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United
States."

2. 28 U.S.C. section 1441(a) provides that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

3. 28 U.S.C. section 1441(b) provides that “[a]ny civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties.”

4. 28 U.S.C. section 1441(c) states that “[w]henver a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise nonremovable claims or causes of action, the entire case may be removed and the district court may determine all issues therein.”

JURISDICTION

5. This action is a civil action over which this Court has original jurisdiction under 28 U.S.C. section 1331, and is one which may be removed to this Court pursuant to the provisions of 28 U.S.C. sections 1441(a), 1441(b), and 1441(c), in that it seeks life insurance benefits under an employee welfare benefit plan, and therefore arises under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. section 1001, *et seq.*

6. Any remaining claims or causes of action in the complaint that are otherwise nonremovable are joined with separate and independent claims or causes of action within the jurisdiction conferred by 28 U.S.C. section 1331, and the entire case is therefore removable under 28 U.S.C. section 1441(c).

FACTS SUPPORTING REMOVAL

7. The Complaint seeks life insurance benefits under a group policy of insurance issued by MetLife’s predecessor-in-interest, Business Men’s Assurance Company of America (“BMA”). Plaintiff alleges in the Complaint that on or about November 1, 1991, BMA executed and delivered to Plaintiff its policy of group life insurance, bearing number BGBR0954860001 (the “Policy”), by which BMA undertook to insure the life of Gaylord Dwight Chilcote

(“Chilcote”). Complaint ¶ 6. Plaintiff alleges that on or about November 17, 1998, Chilcote died in Watsonville, California. Complaint ¶ 6. Plaintiff further alleges that, under the terms of the Policy, Plaintiff became entitled to receive from BMA, and BMA became obligated to pay to Plaintiff the sum of \$100,000 after receiving proof that Chilcote died while covered under the Policy. Complaint ¶ 7. Attached to the Complaint, and incorporated therein by reference, is a document which is alleged to be a copy of the Policy, and which includes a “Statement of ERISA Rights,” confirming that the parties’ relationships and rights are governed by ERISA. Complaint, Exh. A, p. 25. Plaintiff further has attached to the Complaint the “Life Insurance Claim Forms” of both the employee and the employer, listing Chilcote as Plaintiff’s employee. Complaint, Exh. B, p. 1-2. The Complaint seeks to have the Superior Court order MetLife to pay Plaintiff the Policy benefits, plus interest and costs. Complaint, Prayer for Relief. These allegations establish on the face of the Complaint that Plaintiff is suing for recovery of benefits under an employee welfare benefit plan governed by ERISA. *See* 29 U.S.C. § 1002(1).

8. Although the body of the Complaint does not expressly mention ERISA, and purports to be brought entirely under state law, it is a sham pleading because the cause of action attempted to be stated therein is disguised by artful pleading, and necessarily arises under and is completely preempted by ERISA. The cause of action seeks remedies for alleged breach of contract, by failure to provide life insurance benefits allegedly due to Plaintiff under the terms of the Policy, and thus seeks payment of benefits covered by ERISA. The allegations of the Complaint therefore give rise to a claim only under ERISA, if at all. 29 U.S.C. § 1144; *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 62-67 (1987); *Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, 145-48 (1985).

TIMELINESS OF REMOVAL PETITION

9. On March 24, 2008, plaintiff filed the Complaint in the Superior Court of the State of California, in and for the County of Santa Cruz, entitled *Valley Heights Inc. v. Metropolitan Life Insurance Company*, Case No. CV159827. True and correct copies of the Complaint and summons are attached hereto as Exhibit A.

10. The first date on which MetLife was served with a copy of the Complaint was

1 April 9, 2008.

2 11. No other pleadings or papers have been filed, served, or received by MetLife,
3 other than the Complaint and summons.

4 12. This Notice of Removal is filed with this Court within 30 days of the earliest date
5 on which MetLife first was served with a copy of the initial pleadings in the above-entitled
6 action. This removal is thus timely under 28 U.S.C. section 1446(b).

7 WHEREFORE, MetLife removes the above-entitled action to this Court, and requests
8 that the Court assume jurisdiction over this action.

9
10 DATED: May 7, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

11
12 By: 

13 Rebecca A. Hull
14 Nicole O. Snyder
15 Attorneys for Defendant
16 METROPOLITAN LIFE INSURANCE
17 COMPANY
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26
27

Case 5:08-cv-02388-JF

HRL

U.S. District Court Northern California

ECF Registration Information Handout

The case you are participating in has been designated for this court's Electronic Case Filing (ECF) Program, pursuant to Civil Local Rule 5-4 and General Order 45. This means that you must (check off the boxes ☒ when done):

- ☐ **1) Serve** this ECF Registration Information Handout on **all** parties in the case along with the complaint, or for removals, the removal notice. **DO NOT** serve the efiler application form, just this handout.

Each attorney representing a party must also:

- ☐ **2) Register** to become an efiler by filling out the efiler application form. Follow ALL the instructions on the form carefully. If you are already registered in this district, do not register again, your registration is valid for life on all ECF cases in this district.
- ☐ **3) Email** (do not efile) the complaint and, for removals, the removal notice and all attachments, in PDF format within ten business days, following the instructions below. You do not need to wait for your registration to be completed to email the court.
- ☐ **4) Access** dockets and documents using **PACER** (Public Access to Court Electronic Records). If your firm already has a PACER account, please use that - it is not necessary to have an individual account. PACER registration is free. If you need to establish or check on an account, visit: <http://pacer.psc.uscourts.gov> or call (800) 676-6856.

BY SIGNING AND SUBMITTING TO THE COURT A REQUEST FOR AN ECF USER ID AND PASSWORD, YOU CONSENT TO ENTRY OF YOUR E-MAIL ADDRESS INTO THE COURT'S ELECTRONIC SERVICE REGISTRY FOR ELECTRONIC SERVICE ON YOU OF ALL E-FILED PAPERS, PURSUANT TO RULES 77 and 5(b)(2)(D) (eff. 12.1.01) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

All subsequent papers submitted by attorneys in this case shall be filed electronically. Unrepresented litigants must file and serve in paper form, unless prior leave to file electronically is obtained from the assigned judge.

ECF registration forms, interactive tutorials and complete instructions for efilng may be found on the ECF website: <http://ecf.cand.uscourts.gov>

Submitting Initiating Documents

PDF versions of all the initiating documents originally submitted to the court (Complaint or Notice of Removal, exhibits, etc.) must be **emailed (not efiled)** to the **PDF email box for the presiding judge** (not the referring judge, if there is one) **within 10 (ten) business days** of the opening of your case. For a complete list of the email addresses, please go to: <http://ecf.cand.uscourts.gov> and click on **[Judges]**.

You must include the case number and judge's initials in the subject line of all relevant emails to the court. You do not need to wait for your registration to email these documents.

These documents must be emailed instead of e-filed to prevent duplicate entries in the ECF system. All other documents must be e-filed from then on. You do not need to efile or email the Civil Cover Sheet, Summons, or any documents issued by the court at case opening; note that you do need to efile the Summons Returned.

Converting Documents to PDF

Conversion of a word processing document to a PDF file is required before any documents may be submitted to the Court's electronic filing system. Instructions for creating PDF files can be found at the ECF web site: <http://ecf.cand.uscourts.gov>, and click on **[FAQ]**.

Email Guidelines: When sending an email to the court, the subject line of the email **must** contain the **case number**, **judge's initials** and the **type of document(s)** you are sending, and/or the topic of the email.

Examples: The examples below assume your case number is 03-09999 before the Honorable Charles R. Breyer:

Type of Document	Email Subject Line Text
Complaint Only	03-09999 CRB Complaint
Complaint and Notice of Related Case	03-09999 CRB Complaint, Related Case
Complaint and Motion for Temporary Restraining Order	03-09999 CRB Complaint, TRO

Questions

Almost all questions can be answered in our **FAQs** at <http://ecf.cand.uscourts.gov>, please check them first.

You may also email the ECF Help Desk at ECFhelpdesk@cand.uscourts.gov or call the toll-free ECF Help Desk number at: (866) 638-7829.

The ECF Help Desk is staffed Mondays through Fridays from 9:00am to 4:00pm Pacific time, excluding court holidays.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT OF CASE
TO A UNITED STATES MAGISTRATE JUDGE

Pursuant to General Order 44, the Assignment Plan of the United States District Court for the Northern District of California, this case has been assigned for all purposes to the Magistrate Judge whose initials appear following your case number.

In accordance with Title 28 U.S.C. 636(c), with written consent of all parties, this magistrate judge shall conduct any and all proceedings in this case, including a jury or non-jury trial and entry of final judgment. An appeal from a judgment entered by magistrate judge may be taken directly to the United States Court of Appeals in the same manner as an appeal from any other judgment of the district court. You may, however, without adverse consequences, decline to consent to the assignment of the magistrate judge for all purposes. Both a consent form and a declination form have been provided to you. Please complete the form that corresponds to your choice and promptly return to the Court.

In the event that you decline the assignment of the magistrate judge for all purposes, in accordance with Title 28 U.S.C. 636 (b)(1)(a) and General Order 44, that magistrate judge nevertheless has been designated to and will hear and determine pretrial matters not dispositive of a claim or defense.

The plaintiff or removing party shall serve a copy of this notice upon all other parties to this action pursuant to Federal Rule of Civil Procedure 4 and 5.

FOR THE COURT;
RICHARD W. WIEKING, CLERK

By Brooki Puli
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C

Plaintiff(s),

**CONSENT TO PROCEED BEFORE A
UNITED STATES MAGISTRATE JUDGE**

v.

Defendant(s).

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of Title 28, U.S.C. Section 636(c), the undersigned party hereby voluntarily consents to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial, and order the entry of a final judgment. Appeal from the judgment shall be taken directly to the United States Court of Appeals for the Ninth Circuit.

Dated: _____

Signature

Counsel for
(Plaintiff, Defendant or indicate "pro se")

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C

Plaintiff(s),

v.

Defendant(s).

**DECLINATION TO PROCEED BEFORE
A MAGISTRATE JUDGE
AND
REQUEST FOR REASSIGNMENT TO A
UNITED STATES DISTRICT JUDGE**

REQUEST FOR REASSIGNMENT TO A UNITED STATES DISTRICT JUDGE

The undersigned party hereby declines to consent to the assignment of this case to a United States Magistrate Judge for trial and disposition and hereby requests the reassignment of this case to a United States District Judge.

Dated: _____

Signature _____

Counsel for _____
(Plaintiff, Defendant, or indicate "pro se")

OFFICE OF THE CLERK
RICHARD W. WIEKING
CLERK

280 SOUTH FIRST STREET
SAN JOSE, CA. 95113
408-535-536

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**Welcome to the United States District Court for the Northern District of California,
Clerk's Office, San Jose Division**

In addition to the Local Rules, the following guidelines have been provided to ensure that the filing process is accomplished with ease and accuracy. Please help us to assist in making your visit to the U.S. District Court Clerk's Office productive and worthwhile.

1. When submitting a Proof of Service that is not attached to the back of a document, you must attach a cover sheet showing case caption and number in accordance with the Local Rules.
2. Appropriate sized self-addressed envelopes are to be included with proposed orders or when filing documents by mail.
3. In order to facilitate the file stamping process, original documents should be submitted on top of their copies. In other words, group like or corresponding documents together.
4. This office will retain the ORIGINAL plus ONE COPY of most documents submitted. We will conform as many copies as you bring (*within reason*) for your use.
5. The copies retained go directly to the assigned judge or magistrate judge. *Courtesy copies, or instructions for couriers to deliver a copy directly to chambers are inappropriate unless you have been instructed to do so by court order.*
6. The document caption should include the appropriate judge or magistrate judge who is involved in that particular matter or before whom an appearance is being made.
7. The case number must include the initials of the judge and magistrate judge as well as the initials designating the case to Early Neutral Evaluation (ENE) or Arbitration (ARB).
8. The case number must include whether it is a civil or criminal matter by the inclusion of a "C" or "CR" at the beginning of the number.
9. Documents must be stapled and/or ACCO fastened at the top. **NO BINDER CLIPS OR RUBBER BANDS PLEASE.**
10. Two holes-punched at the top of bulky or thick documents at the top of pages will facilitate processing.

**Northern District of California San Jose Division
Criminal and Civil Law and Motion/trial/settlement/case
Management/dismissal Hearing Schedules**

FOGEL (JF) - COURTROOM #3, 5TH FLOOR

Civil:	Friday	@ 9:00 A.M.
Criminal:	Wednesday	@ 9:00 A.M.
CMC:	Friday	@ 10:30 A.M.
Pretrial:	Friday	@ 11:00 A.M. & (10) days before Trial
Trial: Jury Selection:	Friday	@ 1:30 P.M.

LLOYD (HRL) - COURTROOM #2, 5TH FLOOR

Civil:	Tuesdays	@ 10:00 A.M.
Criminal:	Thursdays	@ 9:30 A.M.
CMC:	Tuesdays	@ 1:30 P.M.
Pretrial:	Tuesday	@ 1:30 P.M.

TRUMBULL (PVT) - COURTROOM #5, 4TH FLOOR

Civil:	Tuesday	@ 10:00 A.M.
Criminal:	Thursday	@ 9:30 A.M. & 2:00 P.M.
Stat/CMC:	Tuesday	@ 2:00 P.M.
Pretrial:	Tuesday	@ 2:00 P.M.
Trial:	Monday	@ 9:30 A.M.

WARE (JW) - COURTROOM #8, 4TH FLOOR

Civil:	Monday	@ 9:00 A.M.
Criminal:	Monday	@ 1:30 P.M.
CMC:	Monday	@ 10:00 A.M.
Criminal Pretrial:	Monday	@ 1:30 P.M.
Civil Pretrial:	Monday	@ 3:00pm & two weeks before Trial
Trial: Jury Selection:	Tuesday	@ 9:00 A.M.
Testimony:	Tuesday/ Wednesday/Thursday/Friday	

SEEBORG (RS) - COURTROOM #4, 5TH FLOOR

Civil:	Wednesday	@ 9:30 A.M.
Criminal:	Thursday	@ 9:30A.M.
CMC:	Wednesday	@ 2:30 P.M.
Pretrial:	Wednesday	@ 1:30 P.M.
Trial:	Monday	@ 9:00A.M.

WHYTE (RMW) - COURTROOM #6, 4TH FLOOR

Civil:	Friday	@ 9:00 A.M.
Criminal:	Monday	@ 9:00 A.M.
CMC:	Friday	@ 10:30 A.M.
Pretrial:	Thursday	@ 2:00 P.M. and 20 days before Trial
Trial:	Monday	@ 1:30 P.M.

Rev: 3/13/01:tg
Updated: 08/08/02
Updated:4/22/04:bjw
Updated 11/29/05bjw

San Francisco	16th Floor	building closed between 6PM and 6AM	more info 415-522-2000
San Jose	2nd Floor	building closed between 5PM and 7:30AM	more info 408-535-5364
Oakland	1st Floor	building closed between 5:00 PM and 7:00 AM	more info 510-637-3530

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DROP BOX FILING PROCEDURES

1. The drop box, located outside the Clerk's Office (see above chart), is available for the filing of documents before 9:00 a.m. and after 4:00 p.m. weekdays. Please note that access to the federal building is limited to 'normal business hours' (as noted in the chart above).
2. The drop box may not be used for the filing of any briefs in support of, or in opposition to, any matter scheduled for a hearing within 7 calendar days. All such documents must be filed in the Clerk's Office during regular office hours by the date due.
3. Using the electronic file stamping machine located next to the drop box, stamp each original document "Received" on the **back side of the last page**. Clerk's Office employees empty the box once each court day when the Clerk's Office opens to the public. The "Filed" date, which will be placed on original documents by Intake personnel, will be the same as the "Received" date, unless the "Received" date is a weekend or Court holiday. In those instances, the "Filed" date will be the first court day following the weekend or holiday. Documents placed in the drop box without a "Received" stamp will be filed as of the day the box is next emptied.
4. After stamping each original and enclosing one copy for the court,* the documents must be placed in an orange court mailing pouch or red Expando folder provided for your convenience. *To facilitate processing of your documents, each original document should be submitted on top of its copies.* Prior to placing the pouch or folder in the drop box, please insert in the pouch or folder window a fully completed **Drop Box Filing Information Card**. You may use more than one pouch or folder per filing, *but a separate Information Card must be enclosed for each one.*
(*Please note that the Clerk's Office will retain two copies of all new complaints relating to patents, trademarks and copyrights.)
5. If you wish us to mail you one or more conformed copies that you have provided, you must enclose an appropriately sized, self-addressed, stamped envelope with adequate return postage. Alternatively, if you would like to pick up conformed copies, please mark your return envelope **"FOR MESSENGER PICK UP BY: (NAME, FIRM)."** Your copies will be available for pick-up **after 2:00 p.m.** on the day the drop box is emptied.
6. A filing fee, if required, may be paid by check or money order, payable to "Clerk, U.S. District Court" in an exact amount. *Please do not enclose cash.*
7. Documents deposited in the drop box must be in compliance with all local and federal rules, as appropriate. Documents filed "Under Seal" must be submitted in compliance with Civil L.R. 79-5.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VALLEY HEIGHTS,

Plaintiff (s),

v.

METROPOLITAN LIFE INS.,

Defendant(s).

No. C 08-02388 HRL

**ORDER SETTING INITIAL CASE
MANAGEMENT CONFERENCE
AND ADR DEADLINES**

IT IS HEREBY ORDERED that this action is assigned to the Honorable Howard R. Lloyd. When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the Notice of Assignment of Case to a United States Magistrate Judge for Trial, and all other documents specified in Civil Local Rule 4-2. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients shall familiarize themselves with that rule and with the material entitled "Dispute Resolution Procedures in the Northern District of California" on the Court ADR Internet site at www.adr.cand.uscourts.gov. A limited number of printed copies are available from the Clerk's Office for parties in cases not subject to the court's Electronic Case Filing program (ECF).

CASE SCHEDULE -ADR MULTI-OPTION PROGRAM

Date	Event	Governing Rule
5/9/2008	Notice of removal filed	
8/5/2008	*Last day to: <ul style="list-style-type: none"> meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan file Joint ADR Certification with Stipulation to ADR Process or Notice of Need for ADR Phone Conference 	<u>FRCivP 26(f) & ADR L.R.3-5</u> <u>Civil L.R. 16-8</u>
8/19/2008	*Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report and file Case Management Statement per attached Standing Order re Contents of Joint Case Management Statement (also available at http://www.cand.uscourts.gov)	<u>FRCivP 26(a) (1)</u> <u>Civil L.R. 16-9</u>
8/26/2008	INITIAL CASE MANAGEMENT CONFERENCE (CMC) in Courtroom 2, 5th Floor SJ at 1:30 PM	<u>Civil L.R. 16-10</u>

* If the Initial Case Management Conference is continued, the other deadlines are continued accordingly.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
MAGISTRATE JUDGE HOWARD R. LLOYD

STANDING ORDER RE: INITIAL CASE MANAGEMENT AND DISCOVERY DISPUTES

1. In cases that are randomly assigned to Judge Lloyd for all purposes, the parties are requested to file their written consent to the assignment of a U.S. Magistrate Judge for all purposes, or their written declination of consent, as soon as possible.
2. The civil motion calendar is heard on Tuesdays at 10:00 a.m. The criminal motion calendar is heard on Thursdays at 9:30 a.m. Motions may be noticed for hearing pursuant to Civil L.R. 7. Counsel need not reserve a hearing date in advance for civil motions. However, noticed dates may be reset as the Court's calendar requires.
3. Parties with questions regarding scheduling (excluding settlement conferences) should contact Judge Lloyd's Administrative Law Clerk at (408) 535-5411.
4. A Case Management Conference will be held on the date and time specified in the Order Setting Initial Case Management Conference in Courtroom 2, United States Courthouse, 280 South First Street, San Jose, California. This conference may be continued only by Court Order pursuant to Civil L.R. 16-2(e). Parties may not stipulate to continue a Case Management Conference without Court approval.
5. Pursuant to Civil L.R. 16-9, no later than seven (7) days before the Case Management Conference, the parties shall file a Joint Case Management Statement. For the required format and contents of this filing, follow the "Standing Order for All Judges of the Northern District of California: Contents of Joint Case Management Statement." If preparation of a joint statement would cause undue hardship, the parties may serve and file separate statements, which shall include a description of the undue hardship.
6. Discovery motions may be addressed to the Court in three ways. First, a motion may be noticed on not less than 35 days' notice pursuant to Civil L.R. 7-2. Second, any party may seek an order shortening time under Civil L.R. 6-3 if the circumstances justify that relief. Finally, in emergencies during discovery events (such as depositions), any party may contact the Court to ask if the Judge is available to address the problem pursuant to Civil L.R. 37-1(b). In the event a discovery dispute arises, counsel for the party seeking discovery shall in good faith confer with counsel for the party failing to make the discovery in an effort to resolve the dispute without court action, as required by Fed.R.Civ.P. 37 and Civil L.R. 37-1(a). A declaration setting forth these meet and confer efforts, and the final positions of each party, shall be included in the moving papers. The Court will not consider discovery motions unless the moving party has complied with Fed.R.Civ.P. 37 and Civil L.R. 37-1(a). The parties are discouraged from attaching letters

STANDING ORDER FOR ALL JUDGES OF THE NORTHERN DISTRICT OF
CALIFORNIA

CONTENTS OF JOINT CASE MANAGEMENT STATEMENT

Commencing March 1, 2007, all judges of the Northern District of California will require the identical information in Joint Case Management Statements filed pursuant to Civil Local Rule 16-9. The parties must include the following information in their statement which, except in unusually complex cases, should not exceed ten pages:

1. Jurisdiction and Service: The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's counterclaims, whether any issues exist regarding personal jurisdiction or venue, whether any parties remain to be served, and, if any parties remain to be served, a proposed deadline for service.
2. Facts: A brief chronology of the facts and a statement of the principal factual issues in dispute.
3. Legal Issues: A brief statement, without extended legal argument, of the disputed points of law, including reference to specific statutes and decisions.
4. Motions: All prior and pending motions, their current status, and any anticipated motions.
5. Amendment of Pleadings: The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.
6. Evidence Preservation: Steps taken to preserve evidence relevant to the issues reasonably evident in this action, including interdiction of any document-destruction program and any ongoing erasures of e-mails, voice mails, and other electronically-recorded material.
7. Disclosures: Whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26 and a description of the disclosures made.
8. Discovery: Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the discovery rules, and a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f).
9. Class Actions: If a class action, a proposal for how and when the class will be certified.
10. Related Cases: Any related cases or proceedings pending before another judge of this court, or before another court or administrative body.
11. Relief: All relief sought through complaint or counterclaim, including the amount of any

damages sought and a description of the bases on which damages are calculated. In addition, any party from whom damages are sought must describe the bases on which it contends damages should be calculated if liability is established.

12. Settlement and ADR: Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including compliance with ADR L.R. 3-5 and a description of key discovery or motions necessary to position the parties to negotiate a resolution.
13. Consent to Magistrate Judge For All Purposes: Whether all parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment.
14. Other References: Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.
15. Narrowing of Issues: Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.
16. Expedited Schedule: Whether this is the type of case that can be handled on an expedited basis with streamlined procedures.
17. Scheduling: Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.
18. Trial: Whether the case will be tried to a jury or to the court and the expected length of the trial.
19. Disclosure of Non-party Interested Entities or Persons: Whether each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16. In addition, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.
20. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.